

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONs No 4635 TO 4765 of 1997

and

SPECIAL CIVIL APPLICATIONS No 5690 of 1997
with
SPECIAL CIVIL APPLICATIONS No. 5691 to 5800 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MACHAR FATUBHAI LAXMANBHAI

Versus

STATE OF GUJARAT

Appearance:

TANNA ASSOCIATES for Petitioner
Mr P G Desai, GOVERNMENT PLEADER for Respondent No. 1, 4
SERVED BY DS for Respondent No. 2
MS SEJAL K MANDAVIA for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/10/97

ORAL (COMMON) JUDGEMENT

RULE. in each petitions.

Mr P G Desai, the Government Pleader waives service of Rule on behalf of respondents No.1 and 4 and Ms. Sejal K Mandavia, learned Advocate waives service of Rule on behalf of respondent No.3 in each petitions.

This group of Special Civil Application has been filed challenging the order passed by the Secretary, Education Department, Gandhinagar dated 10.6.1997 whereby he has quashed the order passed by the District Primary Education Tribunal, Junagadh dated 17th October, 1996. The main grievance voiced by the petitioners is that by the impugned order, the Secretary, Education Department has upset the order of the tribunal without notice to the petitioners exercising the suo motu revisional powers. The notice was given only to Advocate Mr P G Gadhvi, who had no instruction to appear before the Education Secretary was not sufficient. It is also contended by Mr B P Tanna, the learned Advocate for the petitioners that the petitioners are tribals and are approaching this Court in the third round, and therefore, it would be appropriate that the entire controversy is settled by this Court. Ordinarily, I would have adopted the course suggested by Mr Tanna. However, I find that there are number of disputed questions of facts involved which cannot be conveniently decided by this Court. In view of this, it is desirable that the matter is reheard by the Secretary, Education Department. It goes without saying that the Secretary will give a fresh look to the entire matter without being influenced of his earlier impugned decision. He will also keep in view that the petitioners are poor tribals, and they have served for more than one and half years.

2. In view of the aforesaid, this group of Special Civil Applications are allowed and the impugned order dated 10.6.1997 is quashed and set aside and the following directions are given:

- (1) The Education Secretary, Government of Gujarat will re-hear the entire matter.
- (2) As suggested by the learned Advocate for the petitioners, Mr P D Gadhvi, Advocate shall appear before the Education Secretary, on behalf of the petitioners.
- (3) The hearing of the case before the Education Secretary is fixed for 12.11.1997. If for any reason, the hearing is not possible on the said date, the next date will be given as far as possible according to the convenience of Mr P D

Gadhvi, Advocate for the petitioners.

- (4) The Secretary, Education will decide the matter after hearing Mr P D Gadhvi within a period of three months. During this period, the order of the Tribunal dated 17.10.1996 shall remain under suspension. However, if the petitioners make any representation for their absorption under the Balguru scheme, the same shall be sympathetically considered. The learned Advocate for the petitioners states that the petitioners will make representation to the Hon'ble Chief Minister. It is open for them to do so.

Rule made absolute to the aforesaid extent.

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msp.